

مدى دستورية التنظيم التشريعى المصرى لجريمة السب والقذف



www.kotobarabia.com

•
• _____

•
•

-

-

طبقا لقوانين الملكية الفكرية

**جميع حقوق النشر و التوزيع الالكتروني
لهذا المصنف محفوظة لكتب عربية. يحظر
نقل أو إعادة نسخ أو إعادة بيع أى جزء من
هذا المصنف و بثه الكترونيا (عبر الانترنت أو
للمكتبات الالكترونية أو الأقراص المدمجة أو أى
وسيلة أخرى) دون الحصول على إذن كتابي من
كتب عربية. حقوق الطبع الورقى محفوظة
للمؤلف أو ناشره طبقا للاتفاقيات السارية.**



:

.

.

:

—

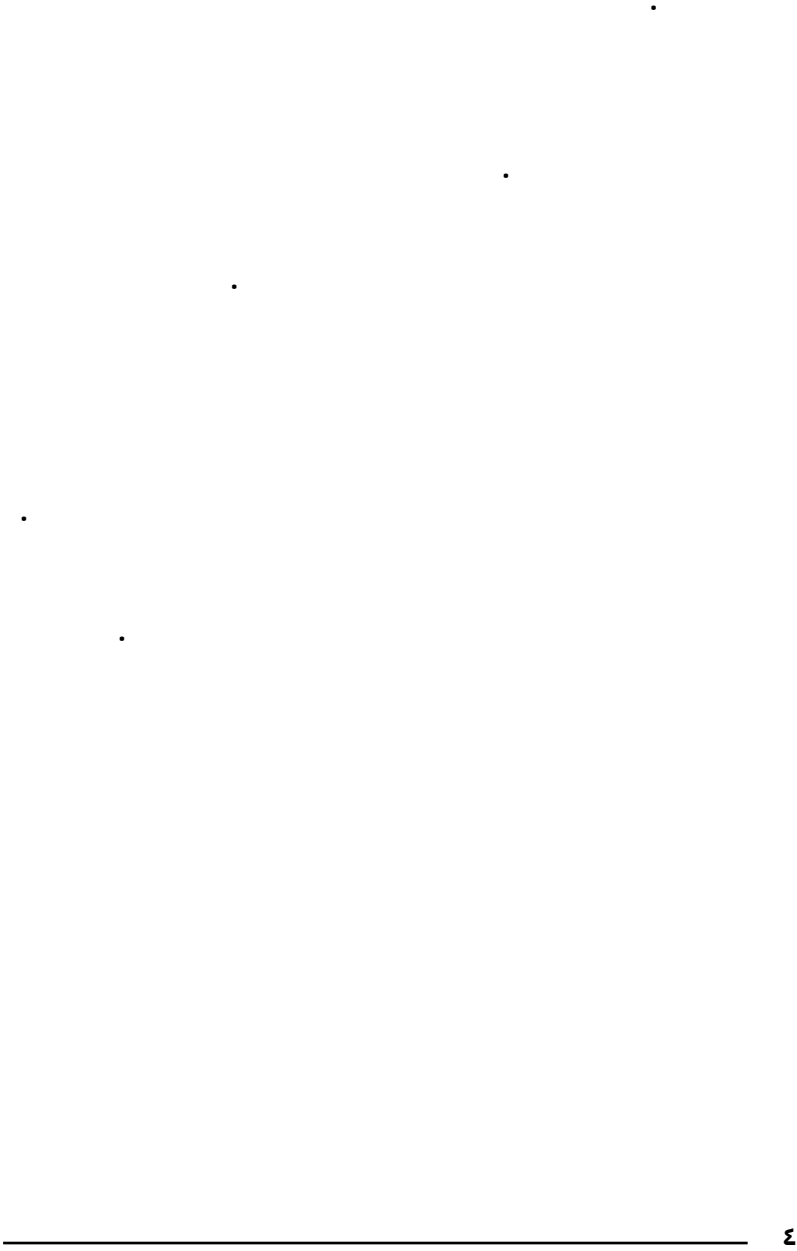
—

()

:

.

.





:

.

.

-:

:

-:

-

"

.

"
.

.

-:

-

"

.

"
.

-:

-

"

"
.

-:

-

"

"
.

-:

:

٦

:

-

)

.(

-

(

)

)

.(

-

-

-

v

-

-

-

-

)

(

-

.

Λ



-

-

.

.

:

:

:

"

-

-

1.

"

.

- :

:

.

-

- "

"

. / /

-

11

.

.

.

_____ ۱۲

.

.

.

..

.

.



-:

:

.

:

-

-:

"

".

-:

- "

.

-

" -

":

.

:

”

—

”

”

：

—

—

— ”

—

()

—

：

()

()

" .

- :

- "

-

" .

-

- :

- "

-

- :

- "

" .

- :

"

-

" .

-

:

" . _____

•
:
:

"

.

"
.

"

.

:

-:

-:

Society for the Protection of Unborn children. Goragan, Case No. C-159/90 [1991] 3 CMLR 849, in particular opinion of advocate General Van Gerven at para. 30-31.

"

"

.

:

-

.

.

:

:

:

:

.

-

.

-

Linges v. Austria, Judgment 8th July 1986, Ser. A, n.103, para. 44

Y•

Handyside v. United Kingdom, Judgment of 7th December, 1976,
 Ser.A, no.24, para. 48-50; *Sunday Times v. United Kingdom*, Judgment of
 26 April, 1979, Ser. A, no. 30, para.62

.

"

"

/ - (-

:

.

Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Inter-American Court of Human Rights, Advisory Opinion, OC-5/85 of November 13, 1985, IACHR, Ser. A, no.5. at para. 45-47
Shelton v. Tucker, 364 US 479,488 (1960).

:

Rangarajan v. Jagjivan Ram and Ors; Union of India and Others vs. Jagjivan Ram, decided on 30th March 1989, SC [1990] LRC (Const) 412, 427; 1989 (2), SCR 204; *The State v. NTN Pty Ltd*, SC, 7 April 1987 (No. SC 323), 14 Common L. Bull (1988), 45; *M Joseph Perera & Ors v. Attorney General*, SC App. Nos. 107-109/86, decision of 25 May 1987 (per Sharvananda CJ),20

Ibid. para. 44. "...
United Communist Party of Turkey and Others v. Turkey, ECHR,
 133/1996/752/951, Strasbourg, 30th January, 1998, para. 45
Socialist Party & Others v. Turkey, 20/1997/804/1007 25th May
 1998, Strasbourg; *Klass and Others v. Germany* of 6 September 1978
 series A. no. 28 para. 59
Sunday Times v. United Kingdom, Judgment of 26 April, 1979,
 Ser. A, no. para.63
Sunday Times v. United Kingdom, Judgment of 26 April, 1979,
 Ser. A, no.30, para.65-66

The Observer & Guardian v. UK, (Spycatcher) Judgment of 26
November 1991, Ser. A, no. 216, at para. 65.
Open Door Counseling and Dublin Well Women Center v.
Ireland, ECHR, 1992, 246-A, at para.73
Sunday Times v. United Kingdom, Judgment of 26 April, 1979,
Ser. A, no. 30, at para.59
The Observer & Guardian v. UK, (Spycatcher) Judgment of 26
November 1991, Ser. A, no. 216, at para. 59(c)

.
.
:
/
/
-

.
"
."
.

.

Muller v. Switzerland, para. 35-36

Sunday Times v. United Kingdom, Judgment of 26 April, 1979, Ser.

A, no. 30 at para.65

[] ..."

."



.

:

:

:

”

Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Inter-American Court of Human Rights, Advisory Opinion, OC-5/85 of November 13, 1985, IACHR, Ser. A, no.5.
at para.186

.

-

.

-

.

-

-

.

:

-

"

"

.

:

-

"

"

-

- "

.

-

”

：

：

：

：

—

”

_____ —

—

”

：

—

”

...

”

—

：

_____ ۲۰

:

"

_____.

public mind

"
.

:

/

/

-

"

-

-

-

-

-

-

.

"
.

၃၂

：

-

”

.

”

：

-

：

”

-

- ”

”

. //

-

੩੩

II

•

—

()

•

•

1

—

- II

11

1

/ /

—

11

—

•

.

.

.

.

:

() .

.(()

_____ : ()

. . .

٢٥ _____

:

:

.

:

-

.

-

-

-

.

.

:

.

.

:

.

.

.

.

.

۲۷

Handyside v. United Kingdom, Judgment of 7th December, 1976,
 Ser.A, no.24, para. 48-50; *Sunday Times v. United Kingdom*, Judgment
 of 26 April, 1979, Ser. A, no. 30 at para.62
*Compulsory Membership in an Association Prescribed by Law for
 the Practice of Journalism*, Advisory Opinion, OC-5/85 of November 13,
 1985, IACHR, Ser. A, no.5. at para. 45-47.
Shelton v. Tucker, 364 US 479,488 (1960).

*Rangarajan v. Jagjivan Ram and Ors; Union of India and Others vs.
 Jagjivan Ram*, decided on 30th March 1989, SC [1990] LRC (Const) 412,

.

" "

" " " "

.

:

.()

.

:

.

427; 1989 (2), SCR 204; *The State v. NTN Pty Ltd*, SC, 7 April 1987 (No. SC 323), 14 Common L. Bull (1988), 45; *M Joseph Perera & Ors v. Attorney General*, SC App. Nos. 107-109/86, decision of 25 May 1987 (per Sharvananda CJ), 20 *Observer and Guardian v. U. K.*, Judgment of 26 Nov. 1991, Series A no. 216, para. 59(c)

.

-

:

-

-

)

.(

.

.

:

:(

)

-(

.

-

Σ.

·
:
)
-(
(

·
:
-
-
-

·
·

Σ) _____

.

.

.

.

.

.

.

.

.

"

_____ -

-

-

-

-

ΣΥ _____

-

"
.

.

.

.

.

-

-

-

.

.

() .

RIANCARELLI (J.): Le principes generaux des droits ()
communicataires applicables en matier penal, R.S.C., 1987, P. 131.

.

.

.

.

:

:

.

.

.

ΣV



:

.

.

.

.

.

.

.

.

.

.

Common law

Law of Libel

:Civil libel Defamatory libel :

.

:

-

:

.

.

.

.

.

.

.

.

.

" "

" "

.

:Criminal libel -

Break

of the peace

- / _____ .(-

-

o) _____

:

.The greater the truth, the greater the libel""

Good

.

defense

:

.

:

.

:

)

(

.

-

Knowledge

Consent

Authority

.

.

.

:

:

.

.

.

:

:

:

.

:Seditious libel

-

.

...

.

:Blasphemous libels

-

.

.

:Obsrenes libels

-

.

.

R. V. Ramsay

and Foote

Bowman V. The secular society

Gleaves v. Deakin

"

.

"

"

.

Goldsmith v. Pressdram

.

:

.

()

.Serious Libel

()

()

.

.

Gleaves v. Deakin [1972] 2 All E. R. 497 (H. L)

Sullivan

Garrison v. Louisiana

Actual Malice Libel

()

STC, [Spanish Constitutional Court], 1a. Sala, 23 February 1989.
New York Times Co. v. Sullivan, 376 U.S. 254 (1964)

. ()
) "
. (

Herbbert v. Lando

.

.

.

.

Garrison v. Louisiana, 379 U.S. 64, 70, 74 (1964)
New York Times Co. v. Sullivan, 376 U.S. 254 (1964) at 279-80
Garrison v. Louisiana, 379 U.S. 64, 70, 74 (1964)

.

.

.

.

7.

:
 :
 .
 .
 suffered any
 .
 .
 actual loss
 .
 .
 .
 .

Offensive or outrungeous

his

 . - - -
 71 _____

actual or presumed loss

.

.

deterrent

.

.

.

.

.

.

.

.

The libel was untrue

.

.

_____ .

_____ 72

• _____

•

:

됐다

•

_____ " **Lingens**

"

"

•

_____ *Lingens v. Austria*, Judgment of July 1986, Seires A no. 103. at para.

44.

ㄱ _____



점

:

”

”

" " " "

.

:

()

.

:

"

Observer & Guardian v. U. K., Judgment of 26 Nov. 1991, Series A
no. 216, para. 59(c)

-

-

-

-

-

-

-

-

"

()

.

77

:

을

.

" .

" .

.

:

:

.

-

Karpen, U. 1996. "Germany" in *Press Law and Practice: A Comparative Study of Press Freedom in European And Other Democracies*, Article XIX, U. K. See p. 86.

-

.

-

.

.

.

.

.

-

Axbergger, H.G. 1996. "Sweden" in Press Law and Practice: *A Comparative Study of Press Freedom in European And Other Democracies*, Article XIX, U. K.

:Privilege

() () ()

.

·
· _____

.

/ - -

-

_____ VT

•
•

•

•

•

VT

.

.

.

.

.

.

_____ **VΣ**

Vo _____

⋮

⋮

•

•

•

•

•

•

•

v1

.

:

:

.

.

.

.()

vv

.-

.()

:

:

.

.

.

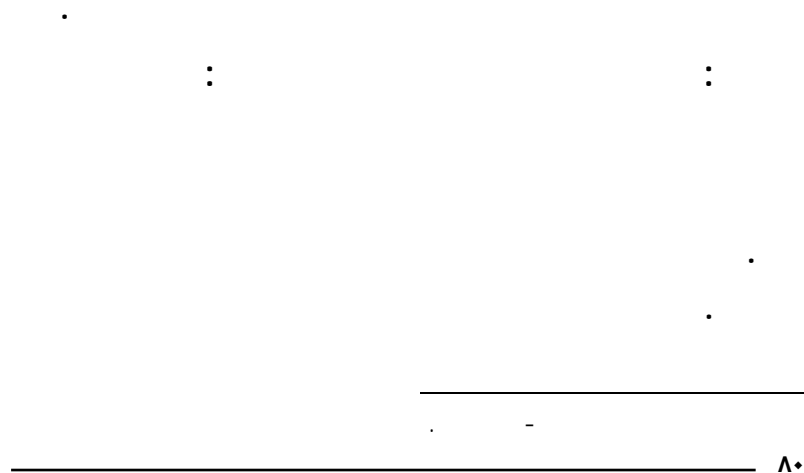
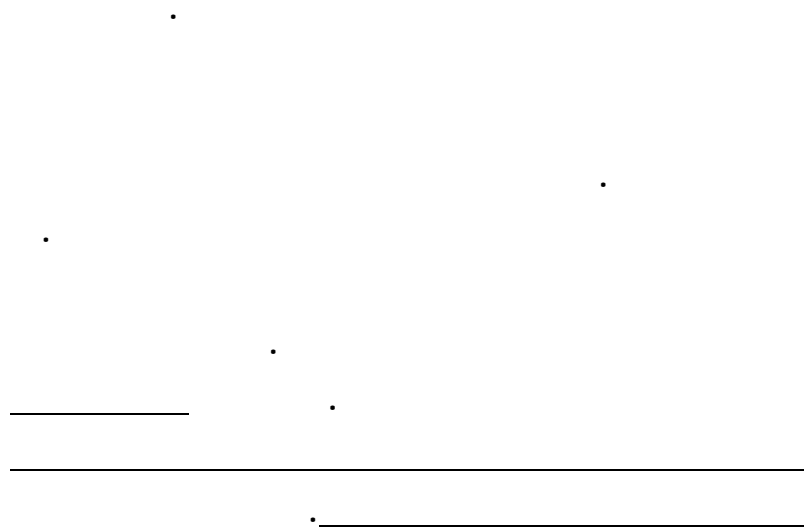
.

.

-

VA





Λ) _____

_____ .

_____ .

_____ .

_____ .

_____ .

_____ **ΛΤ**

:

—

"

"

.

—

.

.Privileged Publications"

" :

:

:

:

.

.

.

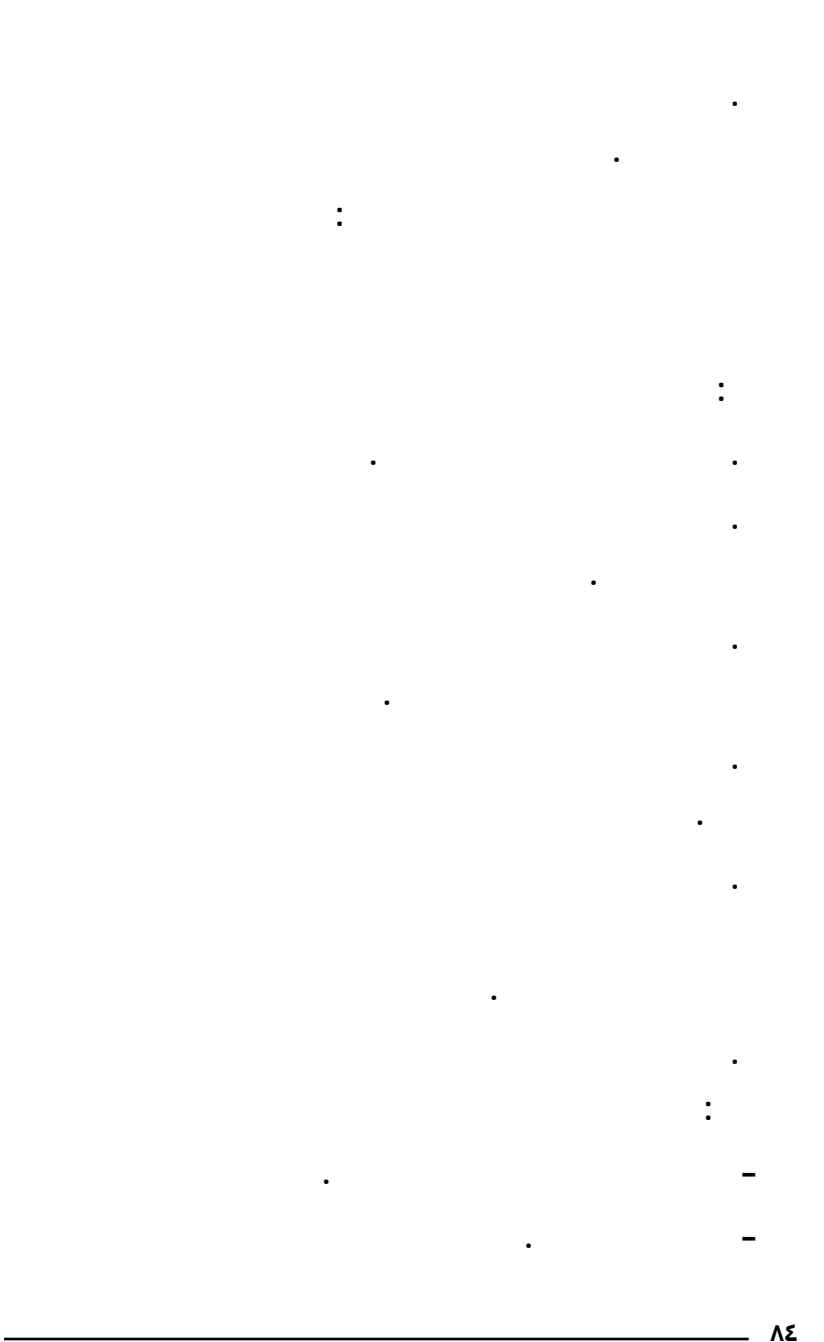
.

.

.

.

.



Qualified Privilege

영역
:Absolute &

" . "

(-)
New South Wales, Defamation Act of 1974, Divison 3 Absolute
Privilege
Statutory Privilege;
Defamation Act of 1996, U. K.

.

∴

“ ”

“ ” “ ”

.

“

.

Part II Privileged Statements Subject to Explanation Or

Contradiction

-

"

"

• _____

"

"

"

"

•

• _____

AV _____

.

"

"

"

"

.

.

—.

ΛΛ

• _____

•

•

•

89 _____

:

• _____

.

—

_____ ۹.

-

-

.

:

Lingens

Castells

.

" :

.

".

:

.

Sweeny v.patterson

:

**Whatever is added to the field of libel is taken from the
field of free debate**

.

Castells v. Spain, Judgment of 23 April 1992, Series A no. 236.

para. 46

Gertz v. Robert Welch, Inc., 418 U.S. 323,341 (1974)

Sweeny v. Patterson, 76 U.S. App.D.C. 23,24,128 F.2d 457,458

(1942)

.

.

∴

毀

.

"

"

STC 105/90 June 6, F.Jco.4

" "

"
.

.

.

.

"

"

.

.

.Sullivan

.

Sunday Times v. U.K., Judgment of 26 April 1979, Series A no. 30,
paa. 63,65-66
Canadian Broadcasting Corp. v. New Brunswick (Attorney General)
[1996] 3 S.C.R. 480 para. 513
Gertz v. Robert Welch, Inc., 418 U.S. 323,341 (1974)

:

(

.

(

.

(

.

.

(

:

.

.

.

:

.

.

.

.

.

.

.

.

.

.

—

X v. Germany, App. no. 5339/72, CD 43, 156; *X v. Germany*, App.
no. 1307/61, CD 9, 53

:

.

.

.

.

.

.

.

.

)

.

(.

:

:

.

:

.

:

.

:

.

:

—

.

:

.

:

.

.

:

:

.

:

.

slander

libel

.

fair comment

.

:

New York time

Supreme court

Alabama

Montgomry

- - - - -

. -

)

102 _____

)

(

.(

)

.

:

.

-

-

-

.

-

1.Σ

.

.

-

.

.

.

1.0 —————

Lingens

civil servants

Seires A no. 103

Lingens v. Austria

Errera, R. 1996 "France" in *Press Law and Practice: A*

Comparative Study of Press Freedom in European and Other Democracies, Article XIX, U. K.

.

1. V —————

.

.

.

.

.

.

.

⋮

“

”

•

•

Paris TGI, of 19 Dec. 1990

Lingens

" :

.

Oberschlic

"

Ser. A no.

Lingens v. Austria

"

"

.

.

"

"

.

.

Schwabe v. Austria

Ser. A no. 242-B :



:

-

:

.

.

.

.

—

.

:

)

()

(

.

)()

(

.

)

()

(

.()

.

:

-

:

. -
 . -
 . -
 . -
 . -

.
 ()

- - -)
 (-
 .
 ()
 .

:

-

:

-(

:

()

.

.

.

•

•

•

•

—

•

•

-(

•

•

-

-

:

.

.

.

.

:

.

-

.

:

.

.

—

—

.

.

.

)

(

.

.

:

:

.

.

.

.

.

.

.

.

.

.

.

:

()

.

.

.

.

.

—

—

—

—

.

.

.

.

.

.

.

-(-
:

()

.

.

.

.

.

()
)

(

.()

()

()

.

-(-

:

.

- - -

-

.

.

∴

—

—

.

()

.

:

-

-

"

"
.

.

-

-

-

.

-

.

.

.

.

.

.

.

.

—

—

.

.

.

.

.

.

.

.

.

-

-

.

-

-

.

()

()

.

.

.

.

.

.(-)

۱۲۴

•

•

•

11

•

•

()

•

()

()

()

()

.()

:

-(-

()

.

:

.

.

.

:

.

.

.

()

()

() ()
) ()
()
()



.